

Appl. No. 09/673,133

Response to Notice of Drawing Inconsistency with Specification, mailed May 8, 2007

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Remarks/Arguments:1. Remarks:a. Response is timely.

A response to the Notice of Drawing Inconsistency with Specification, mailed May 8, 2007, is due on June 8, 2007. This response was filed before this date and is therefore timely.

b. Fees.

The applicants do not believe that any fees are due. However, please charge any fees required or credit any fees overpaid to Deposit Account No. 50-0244.

c. Amendments to the Specification.

Without prejudice or disclaimer, the specification was amended by replacing the section titled Brief Description of Drawing starting at page 9, line 12 and ending at page 10, line 33, with the amended section shown below:

**BRIEF DESCRIPTION OF DRAWINGS**

The present invention will be further understood from the following description with reference to the drawings, in which:

Figure 1 shows a partial restriction map of the *M. catarrhalis* strain M35 *thpB* gene;

Figure 2 shows the nucleotide sequence of the *thpB* gene (SEQ ID NO: 1) and deduced amino acid sequence of the Tbp2 protein of *M. catarrhalis* strain M35 (SEQ ID NO: 2);

Figure 3 shows a partial restriction map of the *thpB* gene for *M. catarrhalis* strain 3;

Figure 4 shows the nucleotide sequence of *thpB* gene (SEQ ID NO: 3) and the deduced amino acid sequence of the Tbp2 protein of *M. catarrhalis* strain 3 (SEQ ID NO: 4);

Figure 5 shows a partial restriction map of the *thpB* genes for *M. catarrhalis* strain LES1;

Figure 6 shows the nucleotide sequence of the *thpB* gene (SEQ ID NO: 5) and deduced amino acid sequence of the Tbp2 *M. catarrhalis* strain LES1 (SEQ ID NO: 6);

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Figure 7 shows an alignment of the Tbp2 proteins from strains 4223 (SEQ ID NO: 7), R1 (SEQ ID NO: 8), M35 (SEQ ID NO: 2), LES1 (SEQ ID NO: 6), Q8 (SEQ ID NO: 9) and 3 (SEQ ID NO: 4). Dots indicate identical residues and spaces have been introduced to maximize the sequence alignment. Underlining indicates those sequences conserved amongst the *M. catarrhalis* Tbp2 proteins and those from *A. pleuropneumoniae*, *H. influenzae*, *N. gonorrhoeae*, *N. meningitidis* and *P. haemolytica* (SEQ ID NOS: 7, 8 and 9 are disclosed in WO 97/32380);

Figure 8 shows the nucleotide and deduced amino acid sequences of the *M. catarrhalis* strain 4223 *tbpA* - *orf3* - *tbpB* gene locus (SEQ ID NO: 10 - entire gene locus; SEQ ID NO: 11 - *tbpA* coding sequence; SEQ ID NO: 12 - deduced amino acid sequence of TbpA; SEQ ID NO: 13 - *orf3* coding sequence; SEQ ID NO: 14 - deduced amino acid sequence of ORF3; SEQ ID NO: 15 - *tbpB* coding sequence; SEQ ID NO: 7 - deduced amino acid sequence of Tbp2); and

Figure 9 shows an alignment of the ORF3 proteins from *M. catarrhalis* strains 4223 (SEQ ID NO: 14) and Q8 (SEQ ID NO: 16). Dots indicate identical residues;

~~Figure 10 shows a restriction map of clone LEM3-24 the construction of which is described in WO 97/32380 (ATCC deposit No. 97,381 deposited December 4, 1995) showing the location of the *orf3* gene in addition to the *tbpA* and *tbpB* genes of *M. catarrhalis* strain 4223 (cf. Figure 2 of WO 96/32380); and~~

~~Figure 11 shows a restriction map of clone SLRD-A the construction of which is described in WO 97/32380 (ATCC deposit No. 97,381 deposited December 4, 1995), showing the locations of the *orf3* gene in addition to the *tbpA* and *tbpB* genes of *M. catarrhalis* strain Q8.~~

Without prejudice or disclaimer, the specification was amended by replacing the paragraph starting at page 32, line 5 with the following rewritten paragraph:

The intergenic region was sequenced for strains 4223 and Q8 and a single open reading frame was identified. This *orf*, identified as *orf3*, was located about 1 kb downstream of *tbpA* and about 273 bp upstream of *tbpB* in each genome (Figure 10—strain 4223; Figure 11—strain Q8). The nucleotide and deduced amino acid sequences of the entire 4223 *tbpA* - *orf3* - *tbpB* gene loci are shown in Figure 8. The encoded 4223 and Q8 ORF3 proteins are 98% identical, 512 amino acid proteins, of molecular weight 58.1 kDa and

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57.9 kDa, respectively. The alignment of the ORF3 protein sequences is shown in Figure 9.

No new matter was added by the above amendments.

2. Arguments.

According to the Notice of Drawing Inconsistency with Specification, mailed May 8, 2007, Figures 10 and 11 are listed in the Brief Description of the Drawings in the specification but not contained in the Drawings.

The applicant have amended the section titled "Brief Description of Drawings" to remove the figure descriptions for Figure 10 and 11. The applicants also amended the paragraph starting at page 32, line 5 of the instant application to remove the language, "(Figure 10 - strain 4223; Figure 11 - strain Q8)" from Example 6. With these amendments, the inconsistency between the "Brief Description of the Drawings" section (and Example 6) and the Drawing is removed.

3. Conclusions.

The amendments, remarks and arguments submitted herein are intended to be fully responsive to the outstanding Notice of Drawing Inconsistency with Specification, to advance the prosecution of the present invention, and to place the application in condition for allowance.

The applicants respectfully request consideration and entry of this paper. The applicants also respectfully request reconsideration of this application, as amended, and issuance of a U.S. patent in this case. Should the Examiner have any questions concerning this application, he is invited to contact the undersigned at (570) 839-5537.

Respectfully submitted,

Date: May 21, 2007

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